

ORIGINAL

(S E R V E D)  
( June 26, 2000 )  
(FEDERAL MARITIME COMMISSION)

**FEDERAL MARITIME COMMISSION**

**WASHINGTON, D. C.**

June 26, 2000

**DOCKET NO. 00-08**

**SAFMARINE CONTAINER LINES N.V. AND SAFMARINE  
AND CMBT LINES N.V. (SCL) TRADING AS CMBT**

v.

**GARDEN STATE SPICES, INC.**

---

**SETTLEMENT APPROVED;  
COMPLAINT DISMISSED WITHOUT PREJUDICE**

---

Complainants Safmarine Container Lines N.V. and Safmarine and CMBT Lines N.V. (SCL), trading as CMBT (Safmarine), and respondent Garden State Spices, Inc. (Garden State) have reached a settlement agreement which they have submitted with a request that the complaint be dismissed upon completion of the settlement payments by Garden State. (See letters dated June 23, 2000, from Safmarine's counsel to the undersigned and to Mr. Rabinder Singh of Garden State.) I approve the settlement agreement and subject to the conditions described below, the complaint is dismissed.

In the complaint which began this proceeding, **Safmarine**, an ocean common carrier, alleged that it carried five shipments of various spices from India to New York but Garden State tendered checks purportedly for payment of the freight, which checks were returned unpaid by the bank because of insufficient funds. Despite repeated demands for payment Garden State allegedly did not pay the freight due, demonstrating bad faith and deceit, causing **Safmarine** to lose its cargo lien on the shipments and to suffer damages to the extent of \$10,625. **Safmarine** alleged that Garden State violated section 1 O(a)( 1) of the Shipping Act of 1984<sup>1</sup> and asked for an award of this sum plus interest and attorney's fees. Before the time expired for Garden State to file its answer to the complaint, the parties entered into discussions that led to the instant settlement agreement.

Under the terms of the settlement agreement, which agreement is attached to this ruling, Garden State agrees to pay the freight due in three installments of **\$4,208.33** each, on or before August 1, September 1, and October 1, 2000, by certified or cashier's check. In case Garden State defaults on these payments and does not cure the default, the parties agree that judgment may be entered against Garden State after notice of the default is given to Garden State by **Safmarine**, such judgment to include unpaid freight plus interest from June 15, 2000 and any additional attorney's fees, costs and disbursements incurred by complainants. As discussed below, the law and the Commission strongly encourage settlements such as the instant one but the Commission is careful that they do not themselves violate some law or public policy. Moreover, care must be exercised

---

<sup>1</sup>Section 10(a)(1) of the 1984 Act provides:

(a) No person may-(1) knowingly and willfully, **directly** or **indirectly**, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or **unfair** device or means obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be **applicable**.

in case a party fails to comply with the settlement agreement to ensure that a complainant is not prejudiced.

The policy that the Commission follows in approving settlements has been enunciated in countless cases. See, e.g., *Old Ben Coal Co. v. Sea-Land Service, Inc.*, 21 F.M.C. 505,512 (1978); *Great White Fleet v. Southeastern Paper Products Export, Inc.*, 26 S.R.R. 1487, 1488-1490 (1994); *Jorge Villena et al.*, 24 S.R.R. 1098, 1101-1 102 (I.D., notice of finality, August 29, 1988).

Nevertheless, an aspect of the instant settlement agreement that warrants attention is the provision protecting Safmarine against possible default by Garden State and the specific relief that **Safmarine** would be requesting if Garden State did in fact default. Although fortunately the Commission has not often encountered parties who have defaulted on their settlement agreements, such defaults have occurred. See *Hugh Symington v. Euro Car Transport, Inc.*, 26 S.R.R. 871 (1993); *CTM International, Inc. v. Medtech Enterprises, Inc., et al.*, 28 S.R.R. 1091, 1092 (1999). In order to protect a complainant in case of default by a respondent, when approving a settlement agreement and dismissing a complaint, the Commission has approved the settlement conditionally and dismissed the complaint without prejudice to its refiling should respondent default on its obligations under the agreement or has approved the settlement agreement subject to the condition that the agreement will be carried out and, in case of default, allows the complaint to be reactivated. *Hugh Symington v. Euro Car Transport, Inc.*, cited above (complaint dismissed without prejudice to refiling if respondent defaults); *CTM International, Inc. v. Medtech Enterprises, Inc.*, 28 S.R.R. 834 (1999) (settlement agreement approved subject to reactivation of complaint in case respondent defaults). I conclude that the same procedure should be followed in the instant proceeding. Accordingly, the settlement agreement is approved and the complaint is dismissed without prejudice

to its reactivation on complainants' request supported by an Affidavit of Facts should respondent Garden State default on its obligations under the agreement.<sup>2</sup>

It is so ordered.



Norman D. Kline  
Administrative Law Judge

---

<sup>2</sup>It is not anticipated that Garden State will default in its payments. However, if such an event should occur, **complainant** may notify me and request that its complaint be reactivated, in which case I will issue a show-cause order leading to a possible default judgment following **Commission** precedent. Cf. *Hugh Symington v. Euro Car Transport, Inc.*, cited above, a case also involving a "confess-judgment" provision. However, because the Commission is an administrative agency and not a court, it will be necessary to follow certain procedures and to tailor any Judgment to conform to the Commission's authority under the Shipping Act of 1984, which means that it may or may not be possible to award complainants "costs" or "disbursements" as contrasted to interest and reasonable attorney's fees, notwithstanding the "confess-judgment" provision. See section 1 l(g) of the Act, 46 U.S.C. app. sec. 1710(g). Finally, if nothing is heard from **complainants** after October 1, 2000, the date for **final** payment under the settlement agreement, it will be presumed that Garden State has carried out its obligations under the settlement agreement and that no **further** order of the **Commission** is necessary.

McMILLAN CONSTABILE LLP  
COUNSELLORS AT LAW  
2180 BOSTON POST ROAD  
LARCHMONT, NEW YORK 10536

June 23, 2000

By Mail and Fax - 1 973 8 15 2891

Garden State Spices, Inc.  
90 Dayton Avenue  
Building 8E  
Passaic, NJ 07055

Attention: Mr. Rabinder Singh

Re: Outstanding Ocean freight and Charges  
owed **Safmarine** and **CMBT**  
**\$10,625.00** plus interest and attorney's fees  
Federal Maritime Commission Docket 00-08

Dear Mr. Singh:

I am writing to confirm the terms of the settlement agreement between Safmarine and CMBT on the one part, and Garden State Spices, Inc., on the other part.

Garden State Spices agrees to pay the aggregate amount of **\$12,625.00**, which includes freight and charges, attorneys' fees and disbursements and interest, in the following manner:

**\$4,208.33**, on or before August 1, 2000  
**\$4,208.33**, on or before September 1, 2000  
**\$4,208.33**, on or before October 1, 2000

Each payment must be made by certified or cashier check payable to "Safmarine, Inc.". The checks should be sent to my attention at the above address, McMillan Constabile LLP, 2 180 Boston Post Rd., Larchmont, NY 10538, and must be received by me no later than the first day of the month.

If any payment is not received by **McMillan** Constabile LLP by the date due (the first day of the month), or if payment is not made by certified or cashier check, McMillan Constabile LLP shall give written notice to Garden State Spices, Inc., via facsimile, advising of the default. If the default is not cured by the appropriate payment within 5 days after the notice is given by facsimile, Safmarine and CMBT may then enter judgment, without further notice against Garden State Spices,

Inc. for \$12,625.00, plus interest from June 15, 2000 and any additional attorneys' fees, costs and disbursements incurred by Safmarine and CMBT, less any payments made pursuant to this Agreement.

The clerk of any court with jurisdiction and/or the Federal Maritime Commission shall enter judgment in accordance with this Agreement upon an Affidavit of Facts constituting the default by counsel for Safmarine and CMBT.

**Safmarine** and CMBT reserve the right to pursue remedies against Garden State Spices at the Federal Maritime Commission and/or any court.

Please sign and return an original of this letter (by fax and mail) confirming that Garden State Spices, Inc. agrees to these settlement terms. Upon receipt of your agreement, I will request the Federal Maritime Commission to place the case on its suspense calendar, pending receipt of full payment, at which time the case will be dismissed.

Yours very truly,  
McMILLAN CONSTABILE LLP

/s/ Kevin J. Keelan

Kevin J. Keelan

Terms agreed to:

Garden State Spices, Inc.

By: /s/ Rabinder Singh

Name: Rabinder Sinnh

Title: President

Date: 6/22/00